

No. 15055

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BEAUMONT SILVERTON, individually and as a member,
representative and Secretary of Teamsters Local Union
No. 898, affiliated with the International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and Helpers
of America and the American Federation of Labor,

Appellant,

vs.

VALLEY TRANSIT CEMENT COMPANY, INC., a corporation,

Appellee.

APPELLANT'S REPLY BRIEF.

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The Union Is a Party to the Action.

Appellee contends strongly in his brief that the Union is not a party to the action since it was commenced in the name of Beaumont Silvertton. However, an examination of the pleadings will show that this is a representative proceeding. It was commenced by Beaumont Silvertton individually and as a member, representative and officer of Local 898, which is an unincorporated association.

Being an unincorporated association, the local union, under California law, has no standing in Court except through one of its members authorized to bring an action on its behalf.

The doctrine of virtual representation under which one or more may sue for the benefit of all if a common or general interest exists, rests on considerations of necessity and paramount convenience and was adopted to prevent a failure of justice.

Weaver v. Pasadena Tournament of Roses, 32 Cal. 2d 833.

The type of proceeding which was commenced in this action is sustainable on two grounds as a class suit. The first is that the parties are so numerous so that it is impracticable to bring all in as parties plaintiff. It would certainly be an undue burden upon the plaintiff and the Court if each and every member of an unincorporated association were required to be joined as a party plaintiff or party defendant. Secondly, there is an identity or community of interests in that the enforcement of a collective bargaining agreement is of interest to every member of the association.

Jellen v. O'Brien, 89 Cal. App. 505.

It is customary, and in fact necessary, under California law that an action on behalf of an association be commenced in the names of members of the association on behalf of all of the members.

Florence v. Helms, 136 Cal. 613;

Haggerty v. Kings Co., 117 Cal. App. 2d 470;

Parker v. Bowron, 40 Cal. 2d 344.

Respectfully submitted,

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